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Executive Director

## **ARIZONA CORPORATION COMMISSION**

September 29, 2008

The Honorable Jeff Bingaman  
United States Senate  
703 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Bingaman:

We, the members of the Arizona Corporation Commission (ACC), wanted to write to you in response to testimony that was provided earlier this summer before the U.S. Senate Committee on Energy and Natural Resources regarding the state of the nation's transmission grid and the implementation of the 2005 Energy Policy Act (EPA 2005). Members of Congress, the Director of the U.S. Department of Energy, the Chairman of the Federal Energy Regulatory Commission (FERC), the President of the National Association of Regulatory Utility Commissioners, and representatives of various industry organizations provided differing perspectives on the best manner to construct a reliable transmission grid. With respect to transmission line siting, these perspectives ranged from recommending that Congress give FERC greater siting authority to asserting that FERC has already interpreted the siting provisions of the EPA 2005 more broadly than intended. As a state entity responsible for regulating public utilities and protecting the public interest to this respect, we strongly oppose increasing FERC's siting authority.

We understand the concerns regarding the construction of a reliable transmission grid; however, we firmly believe that this does not require allowing federal agencies to usurp authority that has historically belonged to the states, but rather, a comprehensive transmission planning process and efficient line siting process at the state level. We take seriously our role of providing a reliable source of electricity to the residents of Arizona, as demonstrated by our comprehensive transmission planning process, our public, judicial and rigorous plant and line siting process and our proven track record for approving generation and transmission line projects, all of which are described below. We do not believe that our state has been inefficient or unsuccessful at siting transmission lines as some of the testimony would suggest.

### ***Transmission Planning***

The ACC employs a collaborative process for transmission planning. In 2000, the ACC initiated, pursuant to statute,<sup>1</sup> a Biennial Transmission Assessment (BTA) process that evaluates the adequacy of existing and planned transmission facilities in Arizona to reliably meet the present and future needs of Arizona customers. Additionally, extensive regional planning studies

<sup>1</sup> Arizona Revised Statutes, §40-360.02(G)

have been conducted in Arizona and the Western U.S. by transmission planning and government agency groups that work together, including: the Southwest Area Transmission Regional Planning Group, which is composed of Arizona, New Mexico and parts of Southern California, West Texas, Southern Nevada and Southern Colorado, and WestConnect, which is composed of utility companies providing electric transmission in the Southwestern U.S. and works collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the western wholesale electricity market. Therefore, Arizona's current transmission planning process draws upon both state and regional resources.

### ***Line Siting Process***

Arizona employs a rigorous line siting process that has been in place since 1971 when the Legislature enacted the Arizona Power Plant and Line Siting Committee Statutes, requiring the ACC to establish the Arizona Power Plant and Transmission Line Siting Committee (Committee).<sup>2</sup> The eleven-member Committee evaluates applications to build power plants of 100 megawatts or more and transmission projects of 115,000 volts or more in the state. Arizona statutes require the Committee to hold a public hearing at which the applicant and any groups or individuals who are granted intervenor status testify and answer questions. The Committee members then vote on whether to grant the applicant a Certificate of Environmental Compatibility (CEC), which is necessary for the building of the power plant or transmission line. If granted, the CEC is forwarded to the ACC for approval. If denied, the applicant may request the ACC to rehear the matter. The entire process must take no longer than 285 days; however, the clock may be stopped under certain circumstances, which could elongate the process.

In issuing a CEC, specific factors, such as the environmental and economic impacts of the project, must be taken into consideration. The Committee can require a plant or transmission line to conform to certain conditions. Additionally, within the parameters of the law, the ACC can amend a CEC to include conditions it deems necessary to mitigate environmental impacts and enhance system reliability with overall consideration for the broad public interest. Such conditions, which often involve design, construction and operating particulars, ensure the need of a project is fairly weighed against the project's environmental impact.

### ***Recent Line Siting Activity***

The ACC has a history of pro-actively siting transmission lines within Arizona—since the enactment of the relevant statutes, the ACC has decided 137 applications, only 4 of which have been denied. In fact, since 1999, the ACC has sited approximately 14,803 megawatts of generation and 739 miles of transmission lines. Further generation and transmission line siting projects are pending.

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<sup>2</sup> Although the core of the ACC's work is based on the powers and duties spelled out in the Arizona Constitution, plant and line siting is an area of authority delegated to the ACC by the Arizona Legislature (Arizona Revised Statutes, Chapter 2, Article 6.2).



## ***Conclusion***

In summary, the state of Arizona is in the best position to balance the need for a proposed transmission line with any impacts the line may have on our state and region. We already have in place measures that we believe are important to ensure that we meet our current and future electricity needs. History shows that Arizona's siting process has been successful and cannot be characterized as obstructionist or provincial. While there may very well be some unjustified NIMBY behavior in parts of the U.S. as asserted during testimony, the ACC is not afflicted with such a policy infirmity and, on the whole, neither are our colleagues in other state commissions. Any decision by FERC or another federal agency to intervene in an Arizona transmission line siting case or to overturn a timely and well-reasoned ACC decision circumvents state authority. Furthermore, broad implementation of the "backstop" authority likely puts state entities that have siting authority at a disadvantage in carrying out their responsibilities due to the added measure of uncertainty in the finality of their decisions.

We are aware that there may be circumstances in which an applicant did not have access to a reasonable process. We certainly take no issue with a process to review such claims of an applicant with an attendant possibility of some form of federal action to address a legitimate and vetted claim of an unreasonable state-level process or, worse, no process at all. That said, we are all sensitive and aware of the tendency of government to move beyond such a narrow role. We remain concerned that what may have been intended to be a "backstop" role, will ultimately and effectively become primary, or de facto primary, authority.

Thank you for your attention to such an important matter as transmission line siting. We urge Congress to revisit this issue in the near future and to work to ensure that FERC's authority does not grow beyond the narrow "backstop" role that was originally intended.

Sincerely,



Mike Gleason, Chairman



William A. Mundell, Commissioner



Jeff Hatch-Miller, Commissioner



Kristin K. Mayes, Commissioner



Gary Pierce, Commissioner

cc: The Honorable Daniel K. Akaka  
The Honorable John Barasso  
The Honorable Jim Bunning  
The Honorable Richard Burr  
The Honorable Maria Cantwell  
The Honorable Bob Corker  
The Honorable Larry E. Craig  
The Honorable Jim DeMint  
The Honorable Byron Dorgan  
The Honorable Pete V. Domenici  
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The Honorable Ken Salazar  
The Honorable Bernard Sanders  
The Honorable Jeff Sessions  
The Honorable Gordon Smith  
The Honorable Jon Tester  
The Honorable Ron Wyden  
The Honorable John Kyl  
The Honorable John McCain  
The Honorable Jeff Flake  
The Honorable Trent Franks  
The Honorable Gabrielle Giffords  
The Honorable Raul Grijalva  
The Honorable Harry Mitchell  
The Honorable Ed Pastor  
The Honorable Rick Renzi  
The Honorable John Shadegg